



INTERIOR BOARD OF INDIAN APPEALS

Estate of Frank Benson Wise

37 IBIA 139 (02/07/2002)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF FRANK BENSON WISE : Order Affirming Decision
:
: Docket No. IBIA 00-97
:
: February 7, 2002

Appellant Ardis Elaine Wise Erickson seeks review of a May 17, 2000, order denying rehearing issued in the estate of Decedent Frank Benson Wise by Administrative Law Judge Harvey C. Sweitzer. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Decedent died on April 23, 1997. Judge Sweitzer held a hearing to probate Decedent's trust or restricted estate on September 22, 1999. The Judge found that Decedent was survived by one child, Appellant here. He held that although Decedent raised two other children, Randy Tillman and Cheryl Hill, he did not legally adopt them. Therefore, the Judge found that if Decedent had died intestate, his entire estate would have passed to Appellant. However, a document dated May 18, 1994, and purported to be Decedent's Last Will and Testament was introduced at the hearing. Appellant raised several objections to the acceptance of that document as Decedent's will. In a March 10, 2000, order, Judge Sweitzer rejected all of Appellant's objections and approved the will. Under the will, all of Decedent's trust property passed to La Rae Marie Shakespeare.

Appellant sought rehearing. In the May 17, 2000, order denying rehearing which is at issue here, Judge Sweitzer found that Appellant did not present any new evidence in her petition for rehearing, but merely repeated arguments that she had previously raised and that had been rejected.

Appellant appealed to the Board and filed an opening statement. No other briefs or statements have been received.

On appeal, Appellant bears the burden of proving the error in the order denying rehearing. Estate of Norman Under the Baggage, Sr., 37 IBIA 124, 125 (2002), and case cited there. In support of her appeal, she repeats arguments she raised at the hearing and in her petition for rehearing; namely, that Decedent was a chronic alcoholic who was not of sound mind and who was forced to execute a will against his wishes by the grandmother of the sole beneficiary under

the will. After considering these arguments in his March 10, 2000, order approving the will, Judge Sweitzer stated that he found convincing the testimony of the will scrivener that Decedent was not intoxicated when the will was executed, that he appeared otherwise to be of sound mind, and that there was no evidence that he was being forced to execute a will against his wishes. Appellant continues to assert that Decedent told her that he had done something “bad” and had willed his land to someone he did not know. However, she offers no new evidence or arguments that would support her contention that Decedent was not of sound mind or was unduly influenced in the execution of the May 18, 1994, will. Under these circumstances, the Board finds that Appellant has not carried her burden of proof.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Sweitzer’s May 17, 2000, order denying rehearing is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge